

Clarklift of North Jersey, Inc. and its alter ego Atlantic Material Handling, Inc. and Local 447, District 15, International Association of Machinists and Aerospace Workers, AFL-CIO.
Case 22-CA-18846

March 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEHPENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Local 447, District 15, International Association of Machinists and Aerospace Workers, AFL-CIO (Local 447 or the Union) on December 9, 1992, the General Counsel of the National Labor Relations Board issued a complaint on January 13, 1993, against Clarklift of North Jersey, Inc. and its alter ego Atlantic Material Handling, Inc. (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 18, 1993, the General Counsel filed a Motion to the National Labor Relations Board for Summary Judgment and Memorandum in Support. On February 24, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional attorney, by letter dated February 2, 1993, notified the Respondent that unless an answer was received by close of business on February 9, 1993, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

About November 1, 1992, Atlantic Material Handling, Inc. was established by Clarklift of North Jersey, Inc. as a disguised continuation of Clarklift of North Jersey, Inc. Atlantic Material Handling, Inc. and Clarklift of North Jersey, Inc. are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

At all material times Respondent, a corporation, with an office and place of business in Fairfield, New Jersey, has been engaged in the sale, rental, service, and repair of lift equipment. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Fairfield, New Jersey facility goods valued in excess of \$50,000 directly to points outside the State of New Jersey and during that same period of time, purchased goods and materials valued in excess of \$50,000 from suppliers located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 447 is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time machinists, journeymen lift truck mechanics, painters, helpers, tiremen, generator and startermen, handymen and parts employees, excluding all office clerical employees, guards and supervisors as defined in the Act.

From June 1990 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement effective from June 1990 to June 1993.

At all times since June 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about November 1, 1992, the Respondent has withdrawn recognition from and has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit by failing and refusing to apply the terms of the collective-bargaining agreement to its employees.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to recognize and bargain with the Union by failing to apply the terms of the 1990-1993 collective-bargaining agreement to the unit employees, we shall order the Respondent to recognize and bargain with the Union, to apply the terms of the agreement to the unit employees, and to make the unit employees whole for any loss of wages or benefits suffered by them as a result of its failure to pay the contractual wages and benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), including any additional amounts applicable to such payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Clarklift of North Jersey, Inc. and its alter ego Atlantic Material Handling, Inc., Fairfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and failing and refusing to recognize and bargain with Local 447, District 15, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive representative of the unit employees by failing and refusing to apply the terms of the 1990-1993 collective-bargaining agreement to the employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively and in good faith with the Union as the exclusive col-

lective-bargaining representative in the unit described below:

All full time and regular part time machinists, journeymen lift truck mechanics, painters, helpers, tiremen, generator and startermen, handymen and parts employees, excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Apply the terms of the 1990-1993 collective-bargaining agreement to the unit employees.

(c) Make whole the unit employees for any loss of wages and benefits or other expenses suffered as a result of its failure to apply the terms of the 1990-1993 collective-bargaining agreement.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Fairfield, New Jersey, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from and fail and refuse to recognize and bargain in good faith with Local 447, District 15, International Association of Machinists and Aerospace Workers, AFL-CIO by failing to apply the terms of the 1990-1993 collective-bargaining agreement to our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative in the unit described below:

All full time and regular part time machinists, journeymen lift truck mechanics, painters, helpers, tiremen, generator and startermen, handymen and parts employees, excluding all office clerical employees, guards and supervisors as defined in the Act.

WE WILL apply the terms of the 1990-1993 collective-bargaining agreement to our unit employees.

WE WILL make whole our unit employees for any loss of wages and benefits or other expenses suffered as a result of our failure to apply the terms of the 1990-1993 collective-bargaining agreement.

CLARKLIFT OF NORTH JERSEY, INC. AND
ITS ALTER EGO ATLANTIC MATERIAL
HANDLING, INC.